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18 December 2009

DATE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: KINARD et al Group Art Unit: 1794
Serial No.: 09/933,291 Examiner: Patterson, Marc A.
Filing Date: August 20, 2001 Attorney Docket No.: D-43502-01
Title: "CASE-READY PACKAGE HAVING ABSORBENT PAD"

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RESPONSE TO NOTIFICATION OF
NON-COMPLIANT APPEAL BRIEF (37 CFR § 41.37)

Sir:

This paper is filed in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed 9 December 2009 in the above-identified application. The Notification of Non-Compliant Appeal Brief (37 CFR 41.37) states that the Brief does not contain a concise explanation of the subject matter defined in each of the independent claims. More specifically, the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) states that the Summary of claimed subject matter must identify each independent claim on appeal and refer to the specification by page and line number or paragraph

number and to the drawings, if any. The Notification of Non-Compliant Appeal Brief (37 CFR 41.37) further states that the response does not require the entire brief, but only the section found defective.

In response, Appellants provide herewith replacement pages 4 and 5 for the Appeal Brief filed 27 November 2009. Pages 4 and 5 of the Appeal Brief are the section entitled "Summary of the Claimed Subject Matter". Replacement Pages 4 and 5, filed concurrently herewith, are also entitled "Summary of the Claimed Subject Matter". Replacement Pages 4 and 5 identify each of the independent claims on appeal, i.e., each of independent claims 1, 21, and 23. Accordingly, it is believed that Replacement Pages 4 and 5 address the requirements of 37 CFR 41.37(c)(1)(v).

Appellants respectfully request entry of the above Replacement Pages and consideration of the Appeal Brief by the USPTO Board of Patent Appeals and Interferences.

Respectfully submitted,



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Enclosed: Appeal Brief Replacement Page 4
Appeal Brief Replacement Page 5



(5) Summary of the Claimed Subject Matter

Independent Claim 1 is directed to a case-ready package (10) for containing a food product (F) which exudes juice and which has a support member (11), a lid member (12) comprising a flexible film, and an absorbent pad (13). [Fig 1, Fig 2, Fig 3, Page 6 lines 1-3] The absorbent pad (16) comprises an upper web (15) comprising a flexible film, a liquid-permeable lower web (14) comprising nonwoven fiber having a hydrophilic composition thereon, and an absorbent layer (16) between the upper web (15) and the lower web (14). [Fig 2, Fig 3, Page 6 lines 3-6] The upper and lower webs (15 and 14) each extend outward of the absorbent layer (16), the upper and lower webs (15 and 14) are attached to one another around an entire outer perimeter portion of the pad (13). [Fig 2, Fig 3, Page 6 lines 6-10] The upper and lower webs (15 and 14) together surround and contain the absorbent layer (16), and the case-ready package (10) further comprises modified atmosphere or vacuum between the support member (11) and the lid member (12). [Fig 2, Fig 3, Page 6 lines 8-10 and lines 16-17] The nonwoven fiber comprises at least one member selected from the group consisting of polyolefin, polyamide, and polyester. [Page 7 lines 17-19]

Preferably, the modified atmosphere comprises oxygen in an amount of from 60 to 80 percent, based on total atmospheric weight within the package. [Page 6 lines 17-19]

Preferably, the hydrophilic composition comprises at least one member selected from the group consisting of polysorbate, ethoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane that are coupled to polar groups containing a hydrophilic moiety. [Page

8 lines 1-5] Preferably, the hydrophilic composition is present on the second web in an amount of from about 0.1 to 10 weight percent, based on the weight of the lower web.

[Page 8 lines 5-8]

Independent Claim 21 is directed to a packaged product comprising a food product which exudes juice, in a case-ready package as set forth in independent Claim 1, above. [Fig. 1; Page 9 lines 4-8, Page 10 lines 5-7]

Independent Claim 23 is directed to a process for making a case-ready package for containing a food product which exudes juice. [Fig 1, Page 9 lines 9-10] The process comprises (A) placing a product to be packaged on a support member having a base; (B) placing an absorbent pad on the support member; (C) evacuating atmosphere from around the product and support member; and (D) placing a lid member over the product and the support member so that the product is surrounded by the lid and the support member.

[Fig 1, Fig 2, Fig 3, Page 9 lines 10-16] The absorbent pad is in accordance with the absorbent pad of independent Claim 1, above. [Page 9 lines 16-17]